

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 95713 / September 9, 2022

WHISTLEBLOWER AWARD PROCEEDING

File No. 2022-81

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In the Matter of the Claim for an Award

in connection with

Redacted

Notice of Covered Action Redacted

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM**

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending the denial of the whistleblower award claim submitted by Redacted (“Claimant”) in connection with the above-referenced covered action (the “Covered Action”). Claimant filed a timely response contesting the preliminary denial. For the reasons discussed below, Claimant’s award claim is denied.

**I. Background**

**A. The Covered Action**

On Redacted the Commission filed suit against Redacted (the “Company”), Redacted alleging, among other things, Redacted

To settle the Commission’s charges, the Company consented to entry of a final judgment ordering the Company liable for disgorgement of Redacted

Redacted The Company also consented to a permanent injunction prohibiting it from future violations Redacted

On <sup>Redacted</sup> the Office of the Whistleblower (“OWB”) posted the Notice for the Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days. Claimant filed a timely whistleblower award claim.

## **B. The Preliminary Determination**

On <sup>Redacted</sup> the CRS issued a Preliminary Determination recommending that Claimant’s claim be denied because Claimant did not provide information that led to the successful enforcement of the Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(3) and 21F-4(c) thereunder. The CRS concluded that Claimant’s information did not either (1) cause the Commission to (a) commence an examination, open or reopen an investigation, or inquire into different conduct as part of a current Commission examination or investigation, and (b) thereafter bring an action based, in whole or in part, on conduct that was the subject of claimant’s information, pursuant to Rule 21F-4(c)(1); or (2) significantly contribute to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act. The CRS determined that Claimant’s information was submitted to the Commission approximately six weeks after the Commission filed the complaint in the Covered Action. As a result, the CRS determined that Claimant’s information was not the source of or the impetus for the investigation that led to the Covered Action, nor did Claimant’s information contribute to the investigation or the resolution of the Covered Action. The CRS also denied Claimant’s claim for a related action award on the ground that because Claimant is not eligible for an award in connection with a Commission action, Claimant is not eligible for an award in connection with any related action.<sup>1</sup>

## **C. Claimant’s Response to the Preliminary Determination**

Claimant submitted a timely written response (the “Response”) contesting the Preliminary Determination.<sup>2</sup> Claimant principally argues that beginning in <sup>Redacted</sup> Claimant had discussions with an investigator for a law firm (the “Law Firm”) concerning the Company and <sup>Redacted</sup> an affiliate (the “Affiliate”) of the Company. Claimant argues that he/she provided information to the Law Firm in <sup>Redacted</sup> regarding <sup>Redacted</sup> by Company and Affiliate. Claimant contends that in <sup>Redacted</sup> the investigator for the Law Firm said that Law Firm had “filed the information with the SEC that [Claimant] provided . . . and [the investigator] had been told the firm had contacted [Claimant].” Claimant states that he/she was never contacted by Law Firm and that Claimant believes Law Firm provided Claimant’s information to the Commission without his/her consent.

## **II. Analysis**

To qualify for an award under Section 21F of the Exchange Act, a whistleblower must voluntarily provide the Commission with original information that leads to the successful

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<sup>1</sup> See 15 U.S.C. § 78u-6(b); Exchange Act Rule 21F-3(b), (b)(1); Rule 21F-4(g) and (f); Rule 21F-11(a); see also Order Determining Whistleblower Award Claim, Release No. 34-86902 (Sept. 9, 2019).

<sup>2</sup> See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

enforcement of a covered action.<sup>3</sup> As relevant here, under Exchange Act Rules 21F-4(c)(1) and (2), respectively, the Commission will consider a claimant to have provided original information that led to the successful enforcement of a covered action if either: (i) the original information caused the staff to open an investigation “or to inquire concerning different conduct as part of a current . . . investigation” and the Commission brought a successful action based in whole or in part on conduct that was the subject of the original information;<sup>4</sup> or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”<sup>5</sup> In addition, the Commission will consider an individual to be the “original source” of the same information the Commission obtains from another source if the information satisfies the definition of original information and the other source obtained the information from the individual or the individual’s representative.<sup>6</sup>

In determining whether information “significantly contributed” to the success of the action, the Commission will consider whether the information was “meaningful” in that it “made a substantial and important contribution” to the success of the covered action.<sup>7</sup> For example, the Commission will consider a claimant’s information to have significantly contributed to the success of an enforcement action if it allowed the Commission to bring the action in significantly less time or with significantly fewer resources, or to bring additional successful claims or successful claims against additional individuals or entities.<sup>8</sup>

Claimant does not qualify for an award under either of the above-described provisions. First, the record demonstrates that the Commission’s investigation which led to the Covered Action (the “Investigation”) was opened in <sup>Redacted</sup> more than eighteen months before Claimant submitted his/her tip to the Commission, and more than one year before Claimant contends Claimant spoke with the investigator associated with the Law Firm. Accordingly, Claimant’s information did not cause the staff to open the Investigation.

Second, the record shows that Claimant’s tip to the Commission did not cause the staff to inquire into different conduct or significantly contribute to the Investigation. To the extent that Claimant argues he/she is the original source of any information provided to the Commission by the Law Firm, Enforcement staff provided a supplemental declaration, which we credit, stating that the staff did not recall receiving any communications or tips from the Law Firm or the investigator with regard to the Company or the Investigation. The staff also reviewed email records associated with the Investigation and did not identify any email or tip from the Law Firm or the investigator. For these reasons, the record does not support the contention that Claimant

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<sup>3</sup> Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

<sup>4</sup> See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

<sup>5</sup> See Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

<sup>6</sup> Exchange Act Rule 21F-4(b)(5), 17 C.F.R. § 240.21F-4(b)(5).

<sup>7</sup> Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 90922 (Jan. 14, 2021) at 4; Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 85412 (Mar. 26, 2019) at 9.

<sup>8</sup> Exchange Act Rel. No. 85412 at 8-9.

was the original source of any information used by the Commission prior to the filing of the Covered Action. Lastly, as stated by the CRS, Claimant's own submission to the Commission occurred approximately six weeks after the Covered Action was filed and therefore did not contribute to the Investigation or to the charges in or resolution of the Covered Action.

In sum, Claimant's information did not affect the opening of the Investigation, it was not used by the staff during the Investigation, nor did it significantly contribute to the Investigation or Covered Action.

For these reasons, Claimant is not entitled to an award.<sup>9</sup>

### **III. Conclusion**

Accordingly, it is hereby ORDERED that the whistleblower award application of Claimant in connection with the Covered Action be, and it hereby is, denied.

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>9</sup> Because Claimant is not eligible for an award in the Covered Action, Claimant is also not eligible for any related action award. *See* 15 U.S.C. § 78u-6(b); Exchange Act Rule 21F-3(b), (b)(1); Rule 21F-4(g) and (f); Rule 21F-11(a); see also Order Determining Whistleblower Award Claim, Release No. 34-86902 (Sept. 9, 2019).